

Message

From: Gude, Karen [Gude.Karen@epa.gov]
Sent: 5/18/2020 7:05:43 PM
Subject: Public Comment Opportunity: Request for Comment Regarding Endangered Species Act Section 7 Consultation in EPA Approval of Clean Water Act Section 404 Programs

Dear Tribal Partner,

I'm writing to let you know that the U.S. Environmental Protection Agency (EPA) will soon be publishing a Federal Register Notice requesting public comment regarding whether Endangered Species Act (ESA) Section 7 Consultation is required when the EPA approves a state or tribe's Clean Water Act Section 404 dredge and fill permit program. Specifically, the EPA is seeking comment on whether the Agency should reconsider its current position that consultation under ESA Section 7(a)(2) is not required when the EPA approves a state or tribe's request to assume the Section 404 dredged and fill permit program under Section 404(h) of the Clean Water Act (CWA).

States have inquired whether the Agency's action of approving a state or tribe's assumption of the Section 404 program is a discretionary action that requires the EPA to consult under ESA Section 7(a)(2). Section 7 of the ESA applies to federal agency actions in which there is discretionary federal involvement or control. If the EPA determines that it has discretion when approving a state or tribal request to assume the Section 404 program, it may be required to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) under Section 7 of the Endangered Species Act.

The Agency has posted a pre-publication version of the notice at : <https://www.epa.gov/cwa404g/request-comment-regarding-endangered-species-act-section-7-consultation-epa-approval-clean> . The public comment period on the notice will be 45 days from the date of publication in the Federal Register. Once the Federal Register publishes, comments can be submitted through Regulations.gov (<https://www.regulations.gov/>); please refer to Docket No. EPA-HQ-OW-2020-0008.

Karen Gude
Tribal Program Coordinator
U.S. EPA/Office of Water
Phone: (202) 564-0831